

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

PALDO SIGN AND DISPLAY COMPANY, )  
an Illinois corporation, and SABON, INC., a )  
Florida corporation, individually and as the )  
representative of a class of similarly-situated ) No. 13-cv-1896  
persons, )  
Plaintiff, ) Hon. Jorge L. Alonso  
v. )  
UNIFIED MARKETING, LLC, et al. ) Magistrate Sheila Finnegan  
Defendants. )

**JOINT STATUS REPORT FOR REASSIGNED CASE**

**I. Nature of the Case.**

**A. Attorneys of Record for Each Party:**

For Plaintiffs: Brian J. Wanca, George Lang, Ryan M. Kelly, Wallace C. Solberg and Ross M. Good of Anderson + Wanca.

For Defendants j2 Global, Inc., j2 Global Canada, Inc.: Mary Ann L. Wymore, David P. Niemeier, Valerie G. Lipic and Thadford A. Felton of Greensfelder, Hemker & Gale, P.C.

For Defendants Accelero Communications, Inc. and Digitspeed Communications, Inc.: Michael R. Dover, Henry T. Kelly and John C. Pirra of Kelley Drye & Warren LLP

Pro Se Litigants Laura E. Chomakos and Nicholas Chomakos

**B. Basis for Federal Jurisdiction:** Plaintiffs claim that this Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1331 in that Plaintiffs' claim arises under a federal statute, the Telephone Consumer Protection Act of 1991 ("TCPA"), 47 USC § 227, *et seq.*

**C. Nature of the Claim:** Plaintiffs' currently pending Second Amended Class Action Complaint (Doc. 71) alleges Defendants sent unsolicited facsimile advertisements to Plaintiff and the putative Class in violation of the TCPA, which forbids the use of "any telephone facsimile machine, computer or other device to send an unsolicited advertisement to a telephone facsimile machine." 47 U.S.C. § 227(b)(1)(C). Plaintiff alleges Defendants j2 Canada, j2 USA, Accelero, DigitalSpeed, and Slingshot are fax broadcasters with a "high degree of involvement in" the sending of the faxes at issue in this case. Defendants deny these allegations and have answered the allegations in the Complaint and asserted certain affirmative defenses.

- D. **Relief Sought by Plaintiffs:** Plaintiffs seek \$500 statutory damages for each violation of the TCPA statute.
- E. **Names of Parties Not Served:** Defendant Slingshot has not been served. Defendants Global Vending Services Inc. and Matthew A. Capicchioni have been served, but have not appeared, although Defendant Capicchioni has responded to interrogatories.

## II. Discovery and Pending Motions

- A. **Pending Motions:** None.

- B. **Discovery to Date, Remaining Discovery, Scheduling Order:**

**Scheduling Order:** On April 17, 2014, the Honorable John W. Darrah entered a Scheduling Order that provides that discovery closes on September 3, 2015. (Doc. 106).

**Discovery to Date:** To date, the parties have engaged in written discovery pertaining both to the case and Defendant Tyler Eyamie's Rule 12(b)(2) motion to dismiss, which was subsequently granted by the Court. (Doc. 103, 104).

In addition, the following depositions have been taken: Tyler Eyamie (for purposes of Eyamie's Rule 12(b)(2) motion); Defendant Nicholas Chomakos; Eric Dickerhoff (from Defendant Accelero); and third parties Erol Sonmez and Yuri Mirskiy. The parties anticipate further depositions between the parties and from third parties. Plaintiffs and j2 Canada and j2 USA are currently attempting to resolve certain disagreements regarding discovery. If they are unable to do so, motions to compel and/or for a protective order are anticipated.

The parties anticipate completing discovery by the discovery cutoff date of September 3, 2015.

**Substantive Rulings:** Defendant Tyler Eyamie moved to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(2). On March 11, 2014, Judge Darrah concluded that specific personal jurisdiction did not exist as to Eyamie, a Canadian citizen, and dismissed him from the case. (Doc. 104 at Page ID 1490-93).

Defendants Laura E. Chomakos and Nicholas Chomakos, *pro se*, moved to dismiss on behalf of themselves and Defendants Sunrise Marketing & Vending, Inc., Unified Marketing, LLC and United Vending and Marketing, Inc., claiming that they did not send faxes and that the Complaint failed to state a claim. On March 11, 2014, Judge Darrah denied the motion to dismiss, finding the Complaint did state a claim and further finding that the Chomakos Defendants "improperly" filed the motion to dismiss on behalf of the aforementioned corporate Defendants. (Doc. 104 at Page ID 1493-94).

Defendant j2 Canada filed a motion to quash a subpoena served by Plaintiffs upon non-party attorney Steven Ring regarding lawsuits he brought under the TCPA against certain Defendants in this case. Magistrate Judge Sheila Finnegan granted the motion on June 26, 2014. (Doc. 120).

The Court granted a motion to dismiss Counts II and III of the First Amended Complaint and the original Complaint without prejudice. (Doc. 32, 61)

### **III. Trial**

- A. Jury Demand:** The case is scheduled for a jury trial.
- B. Trial Date:** A trial date had been set for January 25, 2016 (Doc. 106), but this date has since been vacated. (Doc. 122).
- C. Final Pretrial Order:** No Final Pretrial Order has been filed. Judge Darrah had set a Pretrial Conference for January 21, 2016. (Doc. 106), but this date likewise has been vacated. (Doc. 122). There is no pending pretrial order nor a deadline for filing same.
- D. Length of trial:** The parties expect the trial to last between 5 to 10 trial days.

### **IV. Settlement and Referrals**

- A. Settlement Discussions:** The parties have not engaged in settlement discussions to date.
- B. Settlement Conference:** The parties do not request a Settlement Conference before the Court or Magistrate Judge Finnegan, but may do so in the future.
- C. Magistrate Judge Referral:** This case has been referred to Magistrate Judge Finnegan for discovery disputes.

Dated: February 5, 2015

s/ Wallace C. Solberg

Wallace C. Solberg

Brian J. Wanca

Ryan M. Kelly

Ross M. Good

**ANDERSON + WANCA**

3701 Algonquin Road, Suite 760

Rolling Meadows, IL 60008

Telephone: 847-368-1500

Fax: 847-368-1501

*Attorneys for Plaintiff*

s/ Mary Ann L. Wymore

Mary Ann L. Wymore  
David P. Niemeier  
Valerie G. Lipic  
Thadford A. Felton  
GREENSFELDER, HEMKER & GALE, P.C.  
200 West Madison Street, Suite 2700  
Chicago, Illinois 60606  
Telephone: (312) 419-9090  
Facsimile: (312) 419-1930  
*Attorneys for Defendants j2 Global, Inc. and j2 Global Canada, Inc.*

s/ Michael R. Dover

Michael R. Dover  
Henry T. Kelly  
John C. Pirra  
KELLEY DRYE & WARREN LLP  
333 W. Wacker Drive  
26<sup>th</sup> Floor  
Chicago, IL 60606  
Phone: (312) 857-7070  
Fax: (312) 857-7095  
*Attorneys for Defendants Accelero Communications, Inc. and  
Digitalspeed Communications, Inc.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on February 5, 2015, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ Wallace C. Solberg